

ESTTA Tracking number: **ESTTA243588**Filing date: **10/20/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Unifine F&Bi B.V., besloten vennootschap
Granted to Date of previous extension	10/22/2008
Address	Gijzenveld 6 NL Breda, 4817 ZE NETHERLANDS
Attorney information	David B. Kirschstein Kirschstein Ottinger Israel & Schiffmiller, P.C. 425 Fifth Avenue, 5th Floor New York, NY 10016-2223 UNITED STATES dbk@kirschsteinlaw.com Phone:2126973750

Applicant Information

Application No	77230379	Publication date	06/24/2008
Opposition Filing Date	10/20/2008	Opposition Period Ends	10/22/2008
International Registration No.	NONE	International Registration Date	NONE
Applicant	ZENTIS GmbH & Co. KG JÄlicher Strasse 177 Aachen, 52070 GERMANY		


Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: dietetic food for medical purposes, containing fruits, fruit components, fruit bases, fruit juices and/or fruit flavors, in particular dietetic and low-calorie jams, marmalades, fruit jellies, fruit spreads, fruit creams, fruit mousse
Class 029. All goods and services in the class are opposed, namely: Jams; marmalades; sweet bread spreads, made of fruit; fruit jellies, fruit spreads; fruit mousses; compotes; fruit powder; fruit fillings for bakery products; cooked, dried, preserved and deep-frozen fruits

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3165380	Application Date	04/16/2004
Registration Date	10/31/2006	Foreign Priority Date	12/23/2003
Word Mark	FRUIBEL		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 029. First use:</p> <p>MEAT, FISH, POULTRY AND GAME; MEAT EXTRACTS; PRESERVED, DRIED AND COOKED FRUIT AND VEGETABLES; JELLIES, JAMS, COMPOTES; EGGS, MILK, DAIRY PRODUCTS, NAMELY, DAIRY-BASED DIPS; EDIBLE OILS AND FATS; POWDERED CREAM; STUFFINGS CONSISTING OF PROCESSED FRUIT; AND PREPARATIONS MADE WITH FRUIT, NAMELY, PRESERVES; FRUIT-BASED PREPARATIONS, NAMELY, FRUIT PASTE, FRUIT PUREES AND FRUIT PIECES; FRUIT-BASED FILLINGS FOR CAKES AND PIES; FRUIT-BASED FINISHING JELLIES AND TOPPINGS; ICINGS AND TOPPINGS MADE WITH FRUIT; STUFFINGS MADE FROM MEAT, FISH, POULTRY, GAME AND VEGETABLES; SNACKS, NAMELY, FRUIT-BASED SNACK FOOD, POTATO-BASED SNACK FOOD, SOY-BASED SNACK FOOD, VEGETABLE-BASED SNACK FOOD AND PROTEIN BASED, NUTRIENT-DENSE SNACK BARS; PREPARED MEALS CONSISTING PRIMARILY OF MEAT AND VEGETABLES</p> <p>Class 030. First use:</p> <p>COFFEE, TEA, COCOA, SUGAR, RICE, TAPIOCA, SAGO, ARTIFICIAL COFFEE; FLOURS; AND PREPARATIONS MADE FROM CEREALS, NAMELY, CEREAL BASED SNACK FOOD; BREAD, PASTRY; CONFECTIONERY, NAMELY, FROZEN CONFECTIONS; ICES, HONEY, TREACLE, YEAST, BAKING POWDER, SALT, MUSTARD, VINEGAR, SAUCES THAT ARE CONDIMENTS; SPICES, ICE FOR REFRESHMENT; MIXTURES AND PREPARED MIXTURES FOR BAKERY AND PASTRY USE; ICE CREAM, MIXTURES FOR ICE CREAM; NATURAL FLAVORINGS, FLAVORING PASTES, FLAVORING POWDERS AND FLAVORING EMULSIONS; FLOUR BASES THAT ARE POWDERS FOR BAVARIAN CREAMS; DESSERT MOUSSES; EDIBLE DECORATIONS FOR ICE CREAM AND PASTRY; GLAZING AND FINISHING PREPARATIONS FOR PASTRY, NAMELY, ICING, GLAZE IN THE NATURE OF ICING, GLAZE COMPRISING SUGAR; SUGARS; SPECIALITIES MADE OF SUGAR, NAMELY, BON BONS, COTTON CANDY, CRYSTAL SUGAR PIECES AND CANDY; SAUCES; PROCESSED HERBS; MIXTURES OF PROCESSED HERBS AND SPICES; CAKE PASTRY; PASTA; PREPARED MEALS CONSISTING PRIMARILY OF PASTA; CHOCOLATE AND CHOCOLATE PREPARATIONS, NAMELY, CHOCOLATE BARS, CHOCOLATE CANDIES, CHOCOLATE CHIPS; CHOCOLATE MOUSSE; CHOCOLATE POWDER, CHOCOLATE SYRUP, CHOCOLATE TOPPING, CHOCOLATE TRUFFLES AND CHOCOLATE-BASED FILLING FOR CAKES AND PIES; TASTE-ENHANCING AND FLAVORING PRODUCTS, NAMELY, FLAVORINGS FOR BUTTER, FLAVORINGS FOR CHEESES, FLAVORINGS FOR SOUPS AND FRUIT FLAVORINGS, EXCEPT ESSENCES</p>		

Attachments	79009332#TMSN.jpeg (1 page)(bytes) BELFRUIT OPPOSITION_20081020141154.pdf (6 pages)(251886 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/DBK/
Name	David B. Kirschstein
Date	10/20/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL & APPEAL BOARD

In the Matter of Application Serial No. 77-230,379
filed July 16, 2007 for the mark **beIFRUIT**
Published in the Official Gazette of June 24, 2008

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UNIFINE F & Bi B.V.,	:	
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Opposer,	:	
	:	
v.	:	Opposition No.
	:	
ZENTIS GmbH & Co. KG,	:	
	:	
Applicant.	:	
-----X	:	

NOTICE OF OPPOSITION

UNIFINE F & Bi B.V., a private limited liability company organized and existing under the laws of the Netherlands, located and doing business at Gijzenveld 6, NL 4817 ZE Breda, Netherlands, believes that it will be damaged by registration of the mark shown in the above-mentioned application serial No. 77-230,379 and hereby opposes the same.

As grounds of opposition, it is alleged that:

1. Opposer has for many years been engaged in the manufacture and distribution of food products. Its business is an old and established one, and its goods are well and favorably known by the general public because of their excellence and high quality; and said goods are known and called for by the trademarks which Opposer has from time to time adopted and used to identify itself as the source of origin thereof.

2. Since long prior to filing date of application serial No. 77-230,379, Opposer adopted, commenced to use and has continuously used the trademark **FRUIBEL** in interstate and foreign commerce in connection with its products. The trademark **FRUIBEL** identifies a single source of the products to which it has been applied, that source being Opposer.

3. The mark **FRUIBEL** has been used in connection with Opposer's products by applying the same to labels and containers for the goods and in other ways customary to the trade. Opposer also has a website, www.unifine.com at which information relating to its products including its **FRUIBEL** products can be obtained. The products so marked have been distributed and used throughout the United States and Europe so that the trademark has great value to Opposer and identifies said products in connection with which it is used as coming from Opposer and Opposer only.

4. Opposer's trademark **FRUIBEL** has been registered in the United States Patent and Trademark Office on the Principal Register under Registration No. 3,165,380 dated October 31, 2006. A copy of the aforesaid registration is attached hereto as Exhibit A. It is noted that the registration was obtained in the name of Koninklijke Cooperatie Cosun U.A. and was assigned to Unifine F&Bi B.V. on February 12, 2008. Said assignment was recorded in the Patent & Trademark Office on March 7, 2008. Accordingly, the registration now stands in the name of the Opposer. It is valid and subsisting. Opposer hereby gives notice, in accordance with Trademark Rule 2.122(b), that it will rely thereon as evidence on its behalf in this proceeding, and a status copy showing present title will be introduced into evidence during its testimony period.

5. The products to which applicant intends to apply the mark as set forth in the published application are the same as and similar to those in connection which Opposer has used its mark **belFRUIT**. The parties' respective products are of such nature that when offered for sale, sold and advertised under the same or similar trademarks, they would be considered to come from the same source. Upon information and belief, the parties' respective products would be used by the same class of customers and through the same and similar outlets. Applicant's mark **belFRUIT** is confusingly similar to Opposer's trademark **FRUIBEL**. Accordingly, it is likely that when applicant's mark is applied to its products, confusion or mistake among purchasers will be

caused, and such purchasers will be deceived into believing that applicant's products emanate from Opposer or are in some way approved by or associated with, Opposer.

6. Because of the confusion, mistake or deception which is likely to result from the concurrent use by Opposer of its trademark in connection with its products and applicant's use of its trademark in connection with its products, Opposer's business and reputation and its rights in its aforesaid trademark will be impaired by registration of the mark published.

WHEREFORE, the Opposer demands judgment sustaining this opposition and adjudging that the applicant is not entitled to the registration of the trademark for which it has made application serial No. 77-230,379.

Respectfully submitted,

KIRSCHSTEIN, OTTINGER,
ISRAEL & SCHIFFMILLER, P.C.
Attorneys for Opposer
425 Fifth Avenue
New York, New York 10016-2223
(212) 697-3750

By



DAVID B. KIRSCHSTEIN,
Reg. No. 17244

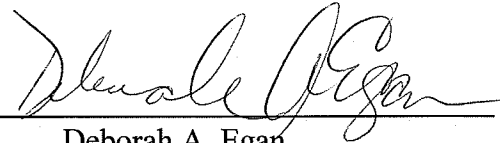
Dated: New York, New York
October 20, 2008

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Opposition was served upon Opposer's counsel as first class mail, postage pre-paid, by mailing a copy thereof to:

John C. Motley, Esq.
Stoel Rives LLP
900 Sw 5th Ave Ste 2600
Portland, or 97204-1268

this 20th day of October, 2008.

A handwritten signature in cursive script, appearing to read "Deborah A. Egan", is written over a horizontal line.

Deborah A. Egan

EXHIBIT A

Int. Cls.: 29 and 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,165,380

Registered Oct. 31, 2006

TRADEMARK
PRINCIPAL REGISTER

FRUIBEL

KONINKLIJKE COÖPERATIE COSUN U.A.
(NETHERLANDS COOPERATIVE SOCIETY
WITH LIMITED LIABILITY)

COSUNPARK 1
NL-4814 ND BREDA
NETHERLANDS

FOR: MEAT, FISH, POULTRY AND GAME; MEAT EXTRACTS; PRESERVED, DRIED AND COOKED FRUIT AND VEGETABLES; JELLIES, JAMS, COMPOTES; EGGS, MILK, DAIRY PRODUCTS, NAMELY, DAIRY-BASED DIPS; EDIBLE OILS AND FATS; POWDERED CREAM; STUFFINGS CONSISTING OF PROCESSED FRUIT; AND PREPARATIONS MADE WITH FRUIT, NAMELY, PRESERVES; FRUIT-BASED PREPARATIONS, NAMELY, FRUIT PASTE, FRUIT PUREES AND FRUIT PIECES; FRUIT-BASED FILLINGS FOR CAKES AND PIES; FRUIT-BASED FINISHING JELLIES AND TOPPINGS; ICINGS AND TOPPINGS MADE WITH FRUIT; STUFFINGS MADE FROM MEAT, FISH, POULTRY, GAME AND VEGETABLES; SNACKS, NAMELY, FRUIT-BASED SNACK FOOD, POTATO-BASED SNACK FOOD, SOY-BASED SNACK FOOD, VEGETABLE-BASED SNACK FOOD AND PROTEIN BASED, NUTRIENT-DENSE SNACK BARS; PREPARED MEALS CONSISTING PRIMARILY OF MEAT AND VEGETABLES, IN CLASS 29 (U.S. CL. 46).

FOR: COFFEE, TEA, COCOA, SUGAR, RICE, TAPIOCA, SAGO, ARTIFICIAL COFFEE; FLOURS; AND PREPARATIONS MADE FROM CEREALS, NAMELY, CEREAL BASED SNACK FOOD; BREAD, PASTRY; CONFECTIONERY, NAMELY, FROZEN CONFECTIONS; ICES, HONEY, TREACLE, YEAST, BAKING POWDER, SALT, MUSTARD, VINEGAR, SAUCES THAT ARE CONDIMENTS; SPICES, ICE FOR REFRESHMENT; MIXTURES AND PREPARED MIXTURES FOR BAKERY AND PASTRY USE; ICE CREAM, MIXTURES FOR ICE CREAM;

NATURAL FLAVORINGS, FLAVORING PASTES, FLAVORING POWDERS AND FLAVORING EMULSIONS; FLOUR BASES THAT ARE POWDERS FOR BAVARIAN CREAMS; DESSERT MOUSSES; EDIBLE DECORATIONS FOR ICE CREAM AND PASTRY; GLAZING AND FINISHING PREPARATIONS FOR PASTRY, NAMELY, ICING, GLAZE IN THE NATURE OF ICING, GLAZE COMPRISING SUGAR; SUGARS; SPECIALITIES MADE OF SUGAR, NAMELY, BON BONS, COTTON CANDY, CRYSTAL SUGAR PIECES AND CANDY; SAUCES; PROCESSED HERBS; MIXTURES OF PROCESSED HERBS AND SPICES; CAKE PASTRY; PASTA; PREPARED MEALS CONSISTING PRIMARILY OF PASTA; CHOCOLATE AND CHOCOLATE PREPARATIONS, NAMELY, CHOCOLATE BARS, CHOCOLATE CANDIES, CHOCOLATE CHIPS; CHOCOLATE MOUSSE; CHOCOLATE POWDER, CHOCOLATE SYRUP, CHOCOLATE TOPPING, CHOCOLATE TRUFFLES AND CHOCOLATE-BASED FILLING FOR CAKES AND PIES; TASTE-ENHANCING AND FLAVORING PRODUCTS, NAMELY, FLAVORINGS FOR BUTTER, FLAVORINGS FOR CHEESES, FLAVORINGS FOR SOUPS AND FRUIT FLAVORINGS, EXCEPT ESSENCES, IN CLASS 30 (U.S. CL. 46).

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

PRIORITY DATE OF 12-23-2003 IS CLAIMED.

OWNER OF INTERNATIONAL REGISTRATION
0826257 DATED 4-16-2004, EXPIRES 4-16-2014.

SER. NO. 79-009,332, FILED 4-16-2004.

MAUREEN DALL, EXAMINING ATTORNEY